

An Act

ENROLLED SENATE
BILL NO. 619

By: Howard of the Senate

and

Moore of the House

An Act relating to hearsay; amending 12 O.S. 2021, Section 2803.1, which relates to statements of children or incapacitated persons; increasing age for which certain child testimony is admissible; updating statutory language; and providing an effective date.

SUBJECT: Hearsay

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2021, Section 2803.1, is amended to read as follows:

Section 2803.1. A. A statement made by a child who has not attained ~~thirteen (13)~~ sixteen (16) years of age at the time the statement is made, a child ~~thirteen (13)~~ sixteen (16) years of age or older who has a disability, or a person who is an incapacitated person as ~~such term is~~ defined by ~~the provisions of~~ Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability ~~so as~~ to render ~~it~~ the statement inherently

trustworthy. In determining such trustworthiness, the court may consider, ~~among other things, the following~~ factors including but not limited to:

- a. the spontaneity and consistent repetition of the statement,
- b. the mental state of the declarant,
- c. whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and
- d. whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

- a. testifies or is available to testify at the proceedings in open court or through an alternative method pursuant to the provisions of the Uniform Child Witness Testimony by Alternative Methods Act or Section 2611.2 of this title, or
- b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person is unavailable, ~~such~~ the statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

C. As used in this section, "disability" means a physical or mental impairment which substantially limits one or more of the major life activities of the child or the child is regarded as having such an impairment by a competent medical professional.

SECTION 2. This act shall become effective November 1, 2023.

Passed the Senate the 22nd day of February, 2023.

Brent Howard
Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Capitol Authority
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 1st
day of May, 20 23, at 2:13 o'clock pm M.
By: Shirley Curry

Approved by the Governor of the State of Oklahoma this 5th
day of May, 20 23, at 10:41 o'clock a M.

K. B. F.
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th
day of May, 20 23, at 11:50 o'clock A M.
By: Brian Blanton